

AMENDED IN SENATE AUGUST 14, 2002

AMENDED IN SENATE JUNE 27, 2002

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2441**

**Introduced by Assembly Member Bates**

February 21, 2002

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An act to add Section 3048 to the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2441, as amended, Bates. Child abduction prevention.

Existing federal law implements the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, which provides remedies for the wrongful removal or retention of a child in cases of international child abduction.

Existing state law requires a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of specified laws of this state governing child custody proceedings to be recognized and enforced. Existing law also prohibits the abduction of a child in violation of the right of custody ~~of~~ or visitation of a person.

This bill would enact the *Synclair-Cannon Child Abduction Preventive Measures Prevention Act of 2002*. The bill would require a court, in cases in which the court becomes aware of facts which may

indicate that there is a risk of abduction of a child, to consider specified factors in determining the risk of abduction of the child and to determine whether conditions are needed to prevent the abduction of the child. The bill would require the court to consider imposing specified conditions to prevent the abduction of the child.

The bill would also require the Judicial Council to make changes to child custody order forms necessary for the implementation of these provisions. This provision would be operative on July 1, 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 *Synclair-Cannon Child Abduction ~~Preventive Measures Act~~*  
3 *Prevention Act of 2002.*

4 SEC. 2. Section 3048 is added to the Family Code, to read:

5 3048. (a) *Notwithstanding any other provision of law, in any*  
6 *proceeding to determine child custody or visitation with a child,*  
7 *every custody or visitation order shall contain all of the following:*

8 (1) *The basis for the court's exercise of jurisdiction.*

9 (2) *The manner in which notice and opportunity to be heard*  
10 *were given.*

11 (3) *A clear description of the custody and visitation rights of*  
12 *each party.*

13 (4) *A provision stating that a violation of the order may subject*  
14 *the party in violation to civil or criminal penalties, or both.*

15 (5) *Identification of the country of habitual residence of the*  
16 *child or children.*

17 (b) (1) In cases in which the court becomes aware of facts  
18 which may indicate that there is a risk of abduction of a child, the  
19 court shall, either on its own motion or at the request of a party,  
20 determine whether measures are needed to prevent the abduction  
21 of the child by one parent. To make that determination, the court  
22 shall consider the risk of abduction of the child, obstacles to  
23 location, recovery, and return if the child is abducted, and potential  
24 harm to the child if he or she is abducted. To determine whether  
25 there is a risk of abduction, the court shall consider the following  
26 factors:

1 (A) Whether a party has previously taken, enticed away, kept,  
2 withheld, or concealed a child in violation of the right of custody  
3 or of visitation of a person, regardless of whether the party acted  
4 in compliance with Section 278.7 of the Penal Code or not.

5 (B) Whether a party has previously threatened to take, entice  
6 away, keep, withhold, or conceal a child in violation of the right  
7 of custody or of visitation of a person.

8 (C) Whether a party lacks strong ties to this state.

9 (D) Whether a party has strong familial, emotional, or cultural  
10 ties to another state or country, including foreign citizenship. This  
11 factor shall be considered only if evidence exists in support of  
12 another factor specified in this section.

13 (E) Whether a party has no financial reason to stay in this state,  
14 including whether the party is unemployed, is able to work  
15 anywhere, or is financially independent.

16 (F) Whether a party has engaged in planning activities that  
17 would facilitate the removal of a child from the state, including  
18 quitting a job, selling his or her primary residence, terminating a  
19 lease, closing a bank account, liquidating other assets, hiding or  
20 destroying documents, applying for a passport, or applying to  
21 obtain a birth certificate or school or medical records.

22 (G) Whether a party has a history of ~~marital instability, a lack~~  
23 ~~of parental cooperation,~~ domestic violence, *lack of parental*  
24 *cooperation*, or child abuse.

25 ~~(H)~~

26 (H) Whether a party has a criminal record.

27 (2) If the court makes a finding that there is a need for  
28 preventative measures after considering the factors listed in  
29 paragraph (1), the court shall consider taking one or more of the  
30 following measures to prevent the abduction of the child:

31 (A) Ordering supervised visitation.

32 (B) Requiring a parent to post a bond in an amount sufficient  
33 to serve as a financial deterrent to abduction, ~~to~~ *the* proceeds of  
34 which may be used to offset the cost of recovery of the child in the  
35 event there is an abduction.

36 (C) Restricting the right of the custodial or noncustodial parent  
37 to remove the child from the county, the state, or the country.

38 (D) Restricting the right of the custodial parent to relocate with  
39 the child, unless the custodial parent provides advance notice to,

1 and obtains the written agreement of, the noncustodial parent, or  
2 obtains the approval of the court, before relocating with the child.

3 (E) Requiring the surrender of passports and other travel  
4 documents.

5 (F) Prohibiting a parent from applying for a new or  
6 replacement passport for the child.

7 (G) Requiring a parent to notify a relevant foreign consulate or  
8 embassy of passport restrictions and to provide *the* court with  
9 proof of that notification.

10 (H) Requiring a party to register a California order in another  
11 state as a prerequisite to allowing a child to travel to that state for  
12 visits, or to obtain an order from another country containing terms  
13 identical to the custody and visitation order issued in the United  
14 States (*recognizing that these orders may be modified or enforced*  
15 *pursuant to the laws of the other country*), as a prerequisite to  
16 allowing a child to travel to that county for visits.

17 (I) Obtaining assurances that a party will return from foreign  
18 visits by requiring the traveling parent to provide the court or the  
19 other parent or guardian with ~~the~~ *any of the following*:

20 (i) *The* travel itinerary of the child, ~~copies~~.

21 (ii) *Copies* of round-trip airline tickets, ~~a~~.

22 (iii) A list of addresses and telephone numbers where the child  
23 can be reached at all times, ~~or an~~.

24 (iv) An open airline ticket for the left-behind parent in case the  
25 child is not returned.

26 (J) Including provisions in the custody order to facilitate use of  
27 the Uniform Child Custody Jurisdiction and Enforcement Act  
28 (Part 3 (commencing with Section ~~3400~~ 3400)) and the Hague  
29 Convention *on the Civil Aspects of International Child Abduction*  
30 (*implemented pursuant to 42 U.S.C. Sec. 11601 et seq.*), such as  
31 identifying California as the home state of the child or otherwise  
32 defining the basis for the California court's exercise of jurisdiction  
33 under Part 3 (commencing with Section 3400), identifying the  
34 United States as the country of habitual residence of the child  
35 pursuant to the Hague Convention, defining custody rights  
36 pursuant to the Hague Convention, obtaining the express  
37 agreement of the parents that the United States is the country of  
38 habitual residence of the child, or that California or the United  
39 States is the most appropriate forum for addressing custody and  
40 visitation orders.

1 (K) Authorizing the assistance of law enforcement.

2 (3) If the court imposes any or all of the conditions listed in  
3 paragraph (2), those conditions shall be specifically noted on the  
4 minute order of the court proceedings.

5 (4) If the court determines there is a risk of abduction that is  
6 sufficient to warrant the application of one or more of the  
7 prevention measures authorized by this section, the court shall  
8 inform the parties of the telephone number and address of the  
9 Child Abduction Unit in the office of the district attorney in the  
10 county where the custody or visitation order is being entered.

11 ~~(b)~~

12 (c) The Judicial Council shall make the changes to its child  
13 custody order forms that are necessary for the implementation of  
14 subdivision ~~(a)~~ (b). This subdivision shall become operative on  
15 July 1, 2003.

